1947. File No. O. Town Planning/47

Legal DEPARTMENT

A BRANCH

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Subject.

Opinions under the Bombay Town Planning Act 1915

P. 25 E

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S.I./11.5.56. 4c.

R.I.No.11207/10-12-46.

Office of the R.L.A.

The question raised by the Commissioner, N.D., is fully considered by the Remembrancer of Legal Affairs in his opinion No.6204, dated 21st November 1934. The Commissioner, N.D., appears to have assumed that that opinion of the Remembrancer of Legal Affairs was based on the ground that the survey of lands was not made under the Land Revenue Code, 1879. His assumption is not correct. The other points raised by him are covered by the R.L.A's opinion. It may be true that the Town Planning Records are adopted as the land Records and the individual plots or sub-divisions of plot are recognised as "holdings" within the meaning of section 3(12) of the land Revenue Code, 1879; but to give jurisdiction to the Collector to decide a boundary dispute under section 119 after the completion of a survey what is necessary is that a dispute must arise concerning the boundary of any survey number or sub-division of a survey number. In the case of a Town Planning Scheme the area is divided into plots. "plot" as defined in section 2(d) of the Town Planning Act, 1915 is not equivalent to "surveynumber" as defined in section 3(6) of the Land Revenue Code, 1879. Consequently section 119 of the land Revenue Code will have no application and the boundary disputes in a Town Planning Scheme will have to be settled under the Town Planning Act. The Remembrancer of Legal Affairs does not see any reason to modify his previous opinion of 1934.

D.V.Vyas

Remembrancer of Legal Affairs.

U.R. to R.D., No.2795, dated the 22nd March 1947.

S.I./10.5.56. &c.

Office of the R.L.A.

Statement of the case for Advocate General's opinion.

In the Award No.A.D.24 dated 5th July 1938 made by the Arbitrator under section 30 of the Bombay Town planning Act, 1915 (Bom.I of 1915), in respect of certain Railway lands included in the Town Planning Scheme, Ahmedabad, No.III (Ellis Bridge), the compensation of Rs.1258 and Rs.4782, respectively, has been shown as payable under section 19 by the local Authority to the B.B. & C.I. Railway (see serial No.120 at p.60 and serial No.156 at page 77 of Bombay Government Gazette, 1939, Pt.II). The Railway authorities took objection to the inadequate compensation awarded in respect of their lands proposed to be acquired for the purpose of municipal roads and contended that they were entitled to compensation according to the market value at the date of acquisition.

The amountsawarded to the Railway Company for the Railway lands are manifestly by way of compensation. These amounts have, however, been erroneously shown in the Arbitrator's award as falling under section 19 of the Town Planning Act. Section 19 relates to the variation of the contribution leviable from owners of plots for costs of the Town Planning Scheme. In his opinion No.6415 dated 23rd September 1943, the R.L.A. held that the grant of compensation falls under section 21 and that under the proviso to that section compensation is to be determined on the basis of the market value at the date of the declaration of the intention to make the scheme and not according to the market value on the date of acquisition.

The Consulting Surveyor to Government, however, did not agree with R.L.A's opinion No.6415 dated 23rd September 1943 and observed:-

"I am afraid the R.L.A's opinion that compensation payable for land proposed to be acquired for the scheme purposes falls under section 21 of the Town Planning is not correct. That section deals with the question compensation for 'Injurious affection' to any property or right, which is quite different from compensation for

the acquisition of the land. In the former case land is not acquired and remains in possession of the owner and yet he receives compensation for injurious affection to his property or right as the result of making the scheme, while in the latter case the compensation is paid purely for land or building acquired outright from him. This latter type of compensation is provided for under section 19 as stated in my previous note and the Arbitrator has quite rightly shown this amount in his award as falling under section 19.

It will be observed from Form A on page 9 of the Rules made under section 52 of the Bombay Town Planning Act that the amount of compensation or contribution under section 19 is entered in column 11 and this figure is arrived at by deducting the value of the original plot in column 6(b) from undeveloped value of final plot in column 9(b). Where a whole plot is acquired and no final plot is allotted in lieu thereof; column 9(b) will be blank and appear in column 11 as a minus figure indicating that it is a demand by the owner under section 19 or in the other words compensation under section 19. A reference to the preliminary remarks on chapter III in the Report of the Select Committee appearing on page 514 of Part VII of the Bombay Government Gazette dated the 18th May 1914 will make this point more clear".

In his opinion No.3987 dated 28th May 1946, the R.L.A. reconsidered the matter and held:-

"section 19 provides for the addition to or deduction from the contribution leviable from a person, and such addition to or deduction from the contribution is to be assessed on the basis of the amount by which the total value of the plots included in the final scheme with all the buildings and works thereon allotted to a person falls short of or exceeds the total value of the original plots with all the buildings and works thereon of such person. The three essential elements of section 19 are:

(1) there should be plots included in the final scheme;

(2) these plots should have been allotted to persons holding original plots;

(3) there should be contribution leviable from such persons.

Apparently this section does not contemplate the acquisition of plots. In the case under consideration the B.B.& C.I. Railway lands are included in the scheme with a view of their being acquired and reserved for public purposes. The other two essentials namely the allotment of plots and the levy of contribution being absent, section 19 will have no application. The reliance on Form A at page 9 of the Bombay Town Planning Rules is, therefore, isconceived.

The acquisition of plots for the purposes of a town

planning scheme otherwise than by recourse to the Land Acquisition Act, 1894, is contemplated by section 23 of the Bombay Town Planning Act and the only provision whereunder the compensation payable to the owner thereof can be assessed appears to be section 21. The injurious affectation of any property in whole or in part under section 21 includes the acquisition thereof for the purpose of the town planning scheme. It appears, therefore, that the compensation payable to the B.B. & C.I. Railway can be assessed not under section 19 but under section 21."

The Consulting surveyor to Government still adheres to his view that section 21 comes into operation where there is a case of compensation for injurious affection to any right in property and not where there is a case for compensation for acquired land. In support of his view he states as follows:-

"It seems the R.L.A. makes no distinction between "Compensation for acquisition of land" and "Injurious Affection" and states that the injurious affection of any property in whole or in part under section 21 includes the acquisition thereof for the purposes of the TownPlanning Scheme. This assertion appears to me gratuitous. Although the expression "Injurious Affection" is not defined in the Town Planning Act that very expression is used in the L.A.Act, 1894 and is quite distinct from Compensation payable to the owner for acquisition of his land. It is obvious that property which is injuriously affected must be the property left with the owner and not that which has been taken away from him. If the whole property is acquired then the owner has no property which is injuriously affected. Besides compensation for alleged injurious affection of a property or right under section 21 is payable only if the owner makes a claim before the Arbitrator within the prescribed time. Thus lands acquired from any owner who for some reason is unable to make a claim for injurious affection within 2 months after the appointment of Arbitrator will be permanently lost to him without entitling him to any compensation. Thus, the B.B.&C.I. Railway can have no claim to compensation for land acquired from them as the Company had failed to make a claim before the Arbitrator within the prescribed time. It is inconceivable that this was the intention of the framers of the Act. If the R.L.A's interpretation is accepted, compensation for partial acquisition of land will fall under two categories. The case of a plot holderwhose land is acquired and who is allotted a final plot on which contribution is levied will come within the purview of section 19 but an adjoining owner of a plot exactly in a similar position as the former but in whose case no contribution is levied will not be entitled to compensation under section 19 but under section 21. Nay, the former will be entitled to double compensation once under section 19 because all the

so-called essential elements of section 19 are present and again under section 21, because acquisition of land is "Injurious Affection" according to R.L.A's interpretation of that section. There are cases in T.P. Scheme in which instead of acquiring land from an owner some additional land is given to him the value of which is to be recovered from him. This is automatically provided for in section 19 but if R.L.A's interpretation were accepted in many cases where owners are given extra land and no contribution is levied on their Final Plots, the Municipality will not be able to recover the value of additional land from the owner under section 19 as the element of contribution will not be there, and there is no other provision in the Act under which this recovery could be affected. It is, therefore, clear that section 19 is the only section under which compensation for land to be acquired and contribution for land to be added to the owner's original plot can be determined, which the former is to be deducted from and the latter is to be added to contribution under section 18 for the purpose of adjustment of the owner's account as provided in section 25. If no contribution has been levied, the question of adding or deduction does not arise and the difference in the value of Original and Final Plots represents net compensation or contribution, as the case may be. Where a whole plot is acquired for the purposes of a Scheme, there will be no final Plot and therefore value will be nil. The difference between value of Original Plot and Nil will be the whole value of Original Plot and the owner will automatically be credited wi th this amount. This is the accepted principle adopted in all Town Planning Schemes prepared under the T.P. Act ever since it was passed in 1915 and on which Form 'A' has been based and the Arbitrator was, therefore, quite right in showing the amount of compensation to be awarded to the B.B.& C.I. Railway under section 19".

As the question is of considerable importance, in view of the difference of opinion between the R.L.A. and the Consulting Surveyor, the Advocate General is requested to favour Government with his view in the matter.

D.V.Vyas

Remembrancer of Legal Affairs.

U.R. to Advocate General, No.851, dated the 23rd January 1947.

S.I./10.5.56. 4c.

ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay, 25th April 1947.

U.R. to the Advocate General Bombay,
No.851, dated the 23rd January 1947.

O P I N I O N.

(1) I agree with the views of the consulting Surveyor to Government in this matter. The B.B. & C.I. Railway had an original plot which was included in the scheme and in the final scheme no plot is provided for the railway, and I do not therefore follow the reference in the statement of case to "acquisition of land". The B.B. & C.I. plot has not been "acquired". It is a result of the scheme that the Railway plot has disappeared and no plot accrues to the Railway in lieu of it. No question of "acquisition" as such enters into the case.

(2) The whole matter is covered by the provisions of the Town Planning Act. The Scheme of that Act is that the owner of an original plot gets the difference between the total value of plots included in the final scheme and the total value of the original plots is adjusted against the contribution payable. In the case where the owner of a plot is not provided with a plot in the final scheme, the whole original value would be payable to him (less contribution if any) and that is exactly how the matter has been worked out in the course of this Town Planning Scheme, the amount payable to the Company being shown first under column 7 and the whole again shown under column 13 as there was neither increment nor contribution. Section 23 of the Act provides for this kind of case.

Section 21, to my mind, has no application. It necessarily implies that the person seeking compensation has the whole or some part of the original plot left to him as included

included in the final scheme and that that which is left is in some way in juriously affected; as for instance, rights of light and air or a right of way of which the benefithad accrued to the land may disappear by reason of the scheme, such loss not being reflected in the calculation of market value for the purpose of Section 19, in which event the owner could claim compensation quite independently of the difference in the market value computed for the purpose of Section 19. Clearly Section 21 and Section 19 are distinct.

I endorse the opinion of the Consulting Surveyor to Government dated the 26th of June 1946.

Sd/- C.K.D.
Advocate General.

S.I./10.5.56. 4c.

Office of the R.L.A.

A copy of the opinion of the Advocate General Bombay together with the statement of the case prepared for him is forwarded herewith.

P.H.Lad
15/5

Remembrancer of Legal Affairs.

U.R. to Health and Local Government Deptt. No.4996 dated the 16th May 1947.

S.I./10.5.56. 4c.

Office of the R.L.A.

It is true as observed by the Hon'ble Minister for Local Self Government that by virtue of section 41(b) of the Town Planning Act, 1915, Pashankar Bros. have become absolute owners of the Final Plot No.713. But the final scheme is now under variation and the draft variation scheme has been approved by Government and the arbitrator is working out the details (see G.R.(G.D.) No.1222 dated 14-12-1935). Under the draft variation scheme the Municipality is givenwide powers to suggest such other items as may suggest themselves to it later on during the preparation of the scheme and it is presumed that the Municipality is agreable to making a provision for a temple for Harijans. Besides, although the provision for a temple for Harijans has not been included in the draft variation scheme, it would be competent for the arbitrator to make variation from the draft scheme subject to certain conditions under sub-section (10) of section 30. A provision for a temple for Harijans would be a public purpose under clause (d) of section 3. Consequently it would be open to the arbitrator with the consent of the local authority and after hearing any objections that may be raised by Pashankar Bros. to reserve a part of Final Plot No.713 for a Harijan temple and to award compensation to Pashankar Bros. under section 19 on the basis of the market value at the date of the declaration to vary the final scheme. (see A.G.'s recent opinion No.21 of 1947). If the course proposed above is followed there would arise no question of acquiring the land under the Land Acquisition Act, 1894.

P.M.Lal
15/5

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.4997, dated the 16th May 1947.

R.I. No.2638/5-3-47.

Office of the R.L.A.

If part of the area in the Final Town Planning Scheme Ghatkopar II comprising building plots intend for residential purposes, is proposed to be used, on acquisition, for a non-residential purpose the Town Planning Scheme, requires to be varied under section 46(1) of the Bombay Town Planning Act, 1915 (see R.L.A's opinion No.730*, dated the 25th January 1941).

* Copy attached.

P.M.Lal
22/5

Remembrancer of Legal Affairs.

U.R. to R.D. No.5283 dated the 23rd May 1947.

S.I./10.5.56. 4c.

It does not appear quite essential to modify Government Notification No.1222, dated the 25th July 1939 by exoluding the land under reference from the draft varied scheme as proposed by the Consulting Surveyor to Government.

The land is needed for the Maharashtra University which would be a public purpose within the meaning of clause (d) of section 3 of the Bombay Town Planning Act, 1915. Consequently the reservation of this land for the Maharashtra University would be intra vires the provisions of the Act. The Town-Planning Scheme is already under variation and the arbitrator has power to vary the draft scheme under clause 10 of section 30. It would therefore be competent for the arbitrator to vary the draft scheme by reserving this land for the Maharashtra University with the sanction of Government if necessary under clause (i) of the proviso to clause (10) of section 30 and after obtaining the consent of the local authority under the second proviso to clause (10). (see R.L.A's recent opinion No.4997, dated 15-6-1947). After such reservation the land would vest in the local authority whereupon the local authority might be asked to transfer it to the Maharashtra University on payment of the price awarded by the arbitrator to the original owner of the land. If the procedure indicated above is found suitable, Government may denotify the land under the Land Acquisition Act and instruct the arbitrator to reserve the land accordingly by varying the pending draft scheme.

D.V.Vyas

Remembrancer of Legal Affairs.

U.R. to R.D., No.7183 dated the 12th July 1947.

S.I./10.5.56. 4c.

Office of the R.L.A.

By G.R. (G.D.) No.3550/33, dated 6.9.1946 Government in exercise of powers vested under section 9(6) of the Bombay Town Planning Act, 1915 sanctioned the making of a Scheme to vary the Town Planning Scheme, Sholapur No.1 in respect of 8 items. Instead of proceeding with making such scheme the Municipality has decided that an addition should be made to the objects of the varied Scheme and has made a fresh declaration of intention to make a varied Scheme on 7.10.1946. The declaration was duly published but it was not communicated to Government till 28.11.1946. The Consulting Surveyor considers that the Municipality should make a fresh declaration as it failed to communicate to Government within twenty-one days from the date of declaration. The Commissioner, Central Division recommends that delay may be condoned.

The questions raised for the consideration of the R.L.A. are :-

(a) whether in view of the sanction already given to the making of a varied Scheme, the Municipality can issue a fresh declaration for substantially the same purpose;

(b) Assuming that the fresh declaration is valid, whether the failure to apply to Government for sanction within twenty-one days of the declaration under section 9(2) debars further proceedings in the case.

It is true that since the date Government accorded its sanction under section 9(6) no further steps have been taken; and Government could rescind the sanction (cf. R.L.A's No.1935, dated 29.9.1924 followed in O. Town-Plan-1/29, dated 6.2.1929 and Advocate General's No.103, dated 17.10.1927). However as pointed out by Health and Local Government Department at p.13 ante the Sholapur Municipality

in effect wishes to add the following general clause to the objects for which the making of a varied scheme has already been sanctioned by Government, viz.

"Such other items as may suggest themselves to the Municipality later on during the preparation of the varied Scheme". By this the Municipality wants to take wide powers to vary as it considers necessary the Scheme even in respect of lands not covered by the eight items mentioned in G.R. (G.D.) No.3560/33, dated 6.9.1946. The inclusion of such a clause does not appear to be permissible. Under sub-section (1) of section 9 it is necessary to make a declaration of intention to make a Scheme in respect of the whole or any part of land included in the Scheme. Sub-section (3) requires the local authority to send to the Provincial Government a plan showing the area proposed to be included in the Scheme and under sub-section (4) a copy of such plan shall be open to the inspection of the public. Sub-section (5) entitles the person likely to be affected by such Scheme to communicate in writing to Government any objection to or suggestion relating to such Scheme. These provisions have to be followed in respect of varying the Scheme. The general clause which the Sholapur Municipality has now inserted in the declaration as item No.9 does not relate to any specific land nor does it state the nature of variation proposed to be made in the Scheme. Consequently this clause would be inconsistent with sub-sections (1), (3), (4) and (5) of section 9 and ultra vires. If the Municipality's intention in including this general clause is to enable it to make minor changes found necessary in the course of

varying the Scheme, such minor variations can be made under section 30(10). The fresh declaration made by the Municipality being materially defective, Government may refuse to entertain the new application of the Municipality and advise it to proceed with the making of the Scheme already sanctioned. Government can also reject the application of the Municipality on the ground of limitation under section 9(2): See R.L.A's opinion No.9095, dated 28.12.1944.

P.M.Lal
30/8

Remembrancer of Legal Affairs.

U.R. to Health and Local Government Department, No.8857, dated the 1st Sept 1947.

S.I./10.5.56. 4c.

Submitted.

2. Certain land included in the Poona Town Planning Scheme No.1 has been proposed to be acquired under the Land Acquisition Act for the Maharashtra University. As the land was included in the T.P. Scheme it was suggested that the scheme should be revoked in respect of the lands in question under section 46(2) of the Town Planning Act to facilitate their acquisition under the L.A.Act. On a reference to the R.L.A., he advised that such revocation was not necessary and that as the Scheme was under variation it would be open to the arbitrator to vary the scheme by reserving the land in question for the Maharashtra University with the sanction of Government if necessary under clause (i) of the proviso to clause (10) of section 30 and after obtaining the consent of the local authority under the second proviso to clause 10). The R.L.A. held also that after such reservation the land would vest in the local authority which can be asked to transfer it to the Maharashtra University (vide R.L.A's opinion No.7183 dated 12th July 1947 at p.13 ante).

3. The Consulting Surveyor to Government states that the course proposed by the R.L.A. has its own objections and practical difficulties. Firstly, he says, the owners would only get the value of the land on 1934 basis and this would cause agitation and heart-burning. Secondly, consent of the local authority may not be easily available and thirdly University Authorities will get possession only when the varied scheme is finally sanctioned and comes into force which is likely to take some time.

4. To avoid these difficulties, the Consulting Surveyor Suggests that acquisition proceeding should be allowed to proceed on the understanding that the arbitrator will incorporate the proposal in the varied T.P. scheme which he will eventually draw up. The R.L.A. is requested to advise whether there is any legal

objection to this procedure.

Sd. /6/10.

A.L.R.

S.I./ 10.5.56/4c.

Acquisition of land included in T.P.Scheme.

Bombay Town Planning Act, 1915 and Land Acquisition Act, 1894.

The Difficulties pointed out by the consulting Surveyor in paragraph 3 of his endorsement at page 15 are real and the course advised by the R.L.A. in his opinion No.7183, dated 12th July 1947, need not be followed.

The suggestion made by the Consulting Surveyor in paragraph 4 would not be legally feasible. The Advocate General's opinion No.19, dated 21-4-1940 does not countenance the acquisition under the Land Acquisition Act, of land, included in the Town Planning Scheme for purposes other than those of the Town Planning Scheme. Consequently if Government desires to proceed with the acquisition under the Land Acquisition Act of the land in the Town Planning Scheme for the Maharashtra University the only feasible course would be to ask the Arbitrator to vary the scheme under clause (1) of the proviso to section 30(10) of the Bombay Town Planning Act, 1915, by omitting this land from the Town Planning Scheme with the consent of the local authority and after hearing the objections, if any, of the owners. Pending the variation of the scheme the proceedings under the Land Acquisition Act may be held up.

P.M.Lal
10/10

Remembrancer of Legal Affairs.

U.R. to R.D. No.374 Confl., dated the 13th October '47.

S.I./11.5.56. 4c.

Office of the R.L.A.

Suspension of Rent Restriction Acts.

Bombay Town Planning Act, 1915.

The view taken in para.3 of G.D. office note at pp.5-7 ante is correct. A statutory provision can be suspended under section 15-AA(1) of the Bombay Town Planning Act to such extent only as may be necessary for the purpose of carrying out of the scheme. If the suspension of the Rent Restriction acts is necessary in the Elphinstone Estate Area for the purpose of making the scheme, such suspension would be equally necessary in other areas included in the scheme. Consequently if the Rent Restriction Acts are to be at all suspended, they should be so done in respect of all areas included in the scheme.

It appears that the Bombay Port Trust requests the suspension of these Acts with a view to deprive the tenants of their rights if any to claim compensation and possession of reconstituted plots. Obviously the suspension of the Act is intended for an ulterior motive and not for facilitating the execution of the scheme. Consequently such suspension is likely to be construed as a fraud on the Act and would not, therefore, be legal.

P.M.Lal
28/10/47.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.10389, dated the 30th October 1947.

S.I./11.5.56. 4c.

The question whether any land included in the Town Planning Scheme can be acquired under Land Acquisition Act, 1894, without variation of the Scheme was considered more than once in the Legal Department. Attention is invited to the statement of the case No.3228, dated 2nd April 1949, were the opinions of the various R.L.A's on this point have been summarised. In 1932 the R.L.A. (Mr.Davies) took the view that there was no objection to

acquiring...

acquiring certain lands included in the draft Town Planning Scheme. In 1935 the R.L.A. (Mr.Sen) held that so long as the proceeding under the Town Planning Act was pending, no action could be taken under the Land Acquisition Act for any purpose foreign to the objects of the Scheme for other-wise a conflict would be created. In 1937 the same R.L.A. (Mr.Sen) held that the question regarding the application of the Land Acquisition Act, 1894, was not free from doubt but that the ordinary rule would be that so long as the proceedings under the Bombay Town Planning Act, 1915, were pending no action under the more general Land Acquisition Act should be taken for the acquisition of land for purposes not in consonance with the objects of such proceedings, in-as-much as the proceedings under the Town Planning Act are always taken for public purpose and it would be improper and illogical to say that the land intended to be dealt with in a particular manner for such public purpose is required to be acquired for another public purpose. That opinion of the R.L.A. was followed subsequently and ultimately it was considered that the point was not free from doubt and the Advocate General was consulted. The Advocate General (Mr.M.C.Setalvad) in his opinion No.19 dated 21-4-1940 observed:

> I agree with the view expressed by Mr.Sen that so long as proceedings under the Bombay Town Planning Act, 1915, are pending, no action under the Land Acquisition Act for the acquisition of land included in the Scheme for purposes other than those of the Town Planning Scheme can be adopted.
>
> There is in terms nothing in the Town Planning Act, which prevents some land included in a Town Planning Scheme being acquired for a different purpose under the Land Acquisition Act. But on first principles it is obvious that the Provincial Government, who have included certain land in a Town Planning Scheme on that basis that it is required for a public purpose, viz; the laying out that Scheme at the same time act under another Statute declaring the identical land to be acquired for another public purpose. If the Provincial Government adopted this course, it would clearly put itself in an inconsistent position.
>
> The only course open therefore under the

circumstances is the one that has been suggested, viz: that the Government should wait till the proceedings under the Town Planning Act are complete and then act under section 46 by varying the Scheme so as to omit the land in question from it."

The aforesaid opinion of the Advocate General has been consistently followed thereafter in all the subsequent opinions of the R.L.A. Section 52 of the Town Planning Act, 1915, lays down that land needed for a purpose of a Town Planning Scheme shall be deemed to be a land needed for a public purpose within the meaning of the Land Acquisition Act, 1894. This provision is intended to enable acquisition of land under the Land Acquisition Act, 1894, for the purpose of the Town Planning Scheme. A similar provision is contained in section 8 of the English Town Planning Act, 1925. So long as the Town Planning Scheme is in progress the Land Acquisition Act, 1894, cannot be put into operation for acquiring any land for a purpose other than that of the Town Planning Scheme, since otherwise there would be conflict between the two Acts. After the Town Planning Scheme is made final, the lands included in the Scheme would be subject to all rights and liabilities attached to them under the Scheme. (see sections 41, 42 and 43 of the Bombay Town Planning Act, 1915). It is, therefore, apparent that unless the Scheme is varied and the land is omitted from the Scheme, it would not be legally feasible to acquire such land under the Land Acquisition Act, 1894. No doubt the procedure about varying the scheme is laborious and the consent of the local authority would be necessary, but it cannot be helped unless and until the Bombay Town Planning Act, 1915, is suitably amended.

With regard to the pending Acquisition proceedings for the Poona University the only course open to Government would be to get the draft Scheme varied by omitting the land required for the Maharashtra University. This question is considered by the R.L.A. in his last opinion No.374 dated 13th October 1947, I do not find any other way out the difficulty.

R.T.K.
15/11

S.I./11.5.56 4c.

Office of the R.L.A.

Acquisition of land included in the Town Planning Scheme.

Bombay Town Planning Act, 1915,
and
Land Acquisition Act, 1894.

Legally it is feasible to have legislation with retrospective effect with a view to validate the notification already issued. However, the administrative Department is requested to consider the question of the proposed legislation with reference to the working of the Town Planning Act. The question is not merely a simple one of withdrawing land from the Town Planning Scheme and then proceeding to acquire it under the Land Acquisition Act; but complications will arise about the consequent adjustment of the scheme and payment of compensation. It is a matter for consideration whether such adjustment or payment could equitably be decided without consulting the parties affected which naturally include the local authority.

P.M.Lal/21.11

Remembrancer of Legal Affairs.

U.R. to E.& I.D. No.11168, dated the 22nd November 1947.

S.I./11.5.56. 4c.

Office of the R.L.A.

Bombay Town Planning Act, 1915.

Draft varied scheme sanctioning.

From the General Department Notification No.4833/33, dated 30-1-45, it will be clear that in exercise of poser conferred by section 14(2) of the Bombay Town Planning Act, Government refused to give sanction to the draft Scheme on account of failure of the local authority to submit the draft Scheme for sanction of Government under section 14(1) within the time prescribed by rule 8(1). From the preamble of the said notification it would be clear that the Municipality did prepare and publish a draft scheme within the time specified in section 10(1). Consequently, the view expressed in para. 4(3) of the Health & Local Government Department office note dated 19-9-1947, that the draft scheme had lapsed is not correct. As Government refused to accord sanction to the draft scheme under section 14(2), it was open to the local authority to follow de novo the whole procedure and to approach Government for modification of the Scheme under section 46(1); The view expressed by the Assistant Secretary, H. & L.G.D. in his note dated the 18th November 1947, is correct.

P.M.Lal/6/12.

Remembrancer of Legal Affairs.

U.R. to H.& L.G.D. No.11758, dated the 8th Dec.1947.

S.I./11.5.56./ 4c.